IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

FRIDAY, THE 16TH NOVEMBER 2007 / 25TH KARTHIKA 1929

WP(C).No. 10449 of 2004(R)

PETITIONER:

VADAVATHY SHIJITH, AGED 25 YEARS,
S/O. ASHOKAN, NARAYANI NILAYAM, PATHIRIYAD,
KALALLOOR, MAMPURAM, KANNUR DISTRICT.

BY ADV. SRI.M.SASINDRAN
SRI.TOJAN J. VATHIKULAM

RESPONDENTS:

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1. THE TODDY WORKERS' WELFARE FUND
INSPECTOR, KANNUR.

2. THE TAHSILDAR (R.R),
THALASSERY, KANNUR DISTRICT.

3. THE VILLAGE OFFICER,
PATHIRIYAD, KANNUR DISTRICT.

R1 BY SC SRI. RENIL ANTO
R2 AND R3 BY GOVERNMENT PLEADER SMT. SMITHA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE NOTICE UNDER SECTION 7

EXT.P1(a) TRUE COPY OF THE NOTICE UNDER SECTION 34

EXT.P2 TRUE COPY OF THE REPRESENTATION

EXT.P3 TRUE COPY OF THE ORDER DATED 30.9.2002 OF THE WELFARE FUND INSPECTOR.

RESPONDENTS' EXHIBITS: NIL

TRUE COPY

P.S. TO JUDGE.

C.N. RAMACHANDRAN NAIR, J.

W.P.C. NO. 10449 OF 2004

Dated this the 16th day of November, 2007

JUDGMENT

Petitioner is challenging revenue recovery proceedings for recovery of Toddy workers welfare fund demanded in respect of toddy shop Nos. 40 and 41 in Thalassery Range during the year 2000-01. Petitioner's case is that petitioner was not the licensee and licensees are liable as employers to remit contribution. However, petitioner did not raise objection against notice proposing demand and did not even file appeal against Ext.P3 final adjudication order. Counsel for the respondents contended that petitioner is son of one of the licensees and when evidence was taken employees gave evidence stating that petitioner was carrying on toddy shop business in the toddy shop Nos. 40 and 41. On going through Ext.P3 adjudication order, I find the adjudicating officer, based on statements and evidence produced by representatives of labour unions and one of the toddy workers who was examined, found in Ext.P3 that petitioner was actually carrying on toddy business in shop Nos. 40 and 41. Moreover, even though

petitioner has claimed that licensee are liable as employers, petitioner has not chosen to make any of the licensees a party in the WPC. Moreover, if the findings in Ext.P3 are incorrect, petitioner would have challenged the same in appeal or in this Court. I do not find any bona fide in the case of the petitioner that he is not liable as employer. Petitioner obviously carried on the business and he is bound under the statute to collect contribution from employees and remit the same along with contribution from him as employer. Even if petitioner is not the licensee, since petitioner physically carried on the business, he acted as agent of the licensee and therefore petitioner has the duty to remit contribution. Counsel for the petitioner has relied on the decision of the Supreme Court in JOSEPH JOSEPH V. STATE OF KERALA, (2002) 1 K.L.T. 827 . This decision has no application to the facts of this case, because petitioner in this case is a son of one of the licensees, who carried on business on behalf of the licensee, namely, his father. This is obviously a collusive case by father and the son to defeat the claim of employees and therefore, I find no bona fide in the O.P. This Court granted conditional stay by order dated 31.3.2004. Since no

payment was made under interim order, full amount should have been recovered from the petitioner. There is gross negligence and laches on the part of respondents 2 and 3 in not recovering the amount after expiry of stay. The District Collector, Kannur, is made additional fourth respondent. He is directed to conduct an enquiry against respondents 2 and 3 for their laches, and take action against them. Besides this, the addl. fourth respondent will supervise the recovery against the petitioner, and if payment is not made, he will initiate Section 65 proceedings against the petitioner, if he has means. Since petitioner carried on business on behalf of licensees, recovery can be continued against them also and if they fail to make payment, section 65 proceedings can be initiated against them also.

G.P. will forward a copy of this judgment to the District Collector, Kannur, for compliance.

W.P. is disposed of as above.

(C.N. RAMACHANDRAN NAIR)
Judge

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